

SENATE BILL NO. 198

INTRODUCED BY LEWIS, LAKE

A BILL FOR AN ACT ENTITLED: "AN ACT CLASSIFYING CERTAIN BIOMASS GENERATION FACILITIES UP TO 25 MEGAWATTS IN NAMEPLATE CAPACITY AS CLASS FOURTEEN PROPERTY; INCLUDING CLASS FOURTEEN BIOMASS GENERATION FACILITIES WITH WIND GENERATION FACILITIES RELATING TO CERTAIN TRANSMISSION LINES AS FACILITIES UNDER THE MAJOR FACILITY SITING ACT; AMENDING SECTIONS 15-6-137, 15-6-141, 15-6-156, 15-6-157, AND 75-20-104, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-6-137, MCA, is amended to read:

"15-6-137. Class seven property -- description -- taxable percentage. (1) Except as provided in subsection (2), class seven property includes:

(a) all property owned by cooperative rural electrical associations that serve less than 95% of the electricity consumers within the incorporated limits of a city or town, except rural electric cooperative properties described in 15-6-141(1)(a);

(b) electric transformers and meters; electric light and power substation machinery; natural gas measuring and regulating station equipment, meters, and compressor station machinery owned by noncentrally assessed public utilities; and tools used in the repair and maintenance of this property.

(2) Class seven property does not include wind generation facilities and biomass generation facilities classified under 15-6-157.

(3) Class seven property is taxed at 8% of its market value."

Section 2. Section 15-6-141, MCA, is amended to read:

"15-6-141. Class nine property -- description -- taxable percentage. (1) Class nine property includes:

(a) centrally assessed allocations of an electric power company or centrally assessed allocations of an electric power company that owns or operates transmission or distribution facilities or both, including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or

1 distribute electrical energy, allocations of properties constructed, owned, or operated by a public agency created
2 by congress to transmit or distribute electrical energy produced at privately owned generating facilities, not
3 including rural electric cooperatives. However, rural electric cooperatives' property, except wind generation
4 facilities and biomass generation facilities classified under 15-6-157, used for the sole purpose of serving
5 customers representing less than 95% of the electric consumers located within the incorporated limits of a city
6 or town of more than 3,500 persons in which a centrally assessed electric power company also owns property
7 or serving an incorporated municipality with a population that is greater than 3,500 persons formerly served by
8 a public utility that after January 1, 1998, received service from the facilities of an electric cooperative is included.
9 For purposes of this subsection (1)(a), "property used for the sole purpose" does not include a headquarters,
10 office, shop, or other similar facility.

11 (b) allocations for centrally assessed natural gas companies having a major distribution system in this
12 state; and

13 (c) centrally assessed companies' allocations except:

14 (i) electrical generation facilities classified under 15-6-156;

15 (ii) all property classified under 15-6-157;

16 (iii) all property classified under 15-6-158 and 15-6-159;

17 (iv) property owned by cooperative rural electric and cooperative rural telephone associations and
18 classified under 15-6-135;

19 (v) property owned by organizations providing telephone communications to rural areas and classified
20 under 15-6-135;

21 (vi) railroad transportation property included in 15-6-145;

22 (vii) airline transportation property included in 15-6-145; and

23 (viii) telecommunications property included in 15-6-156.

24 (2) Class nine property is taxed at 12% of market value."
25

26 **Section 3.** Section 15-6-156, MCA, is amended to read:

27 **"15-6-156. Class thirteen property -- description -- taxable percentage.** (1) Except as provided in
28 subsections (2)(a) through (2)(g), class thirteen property includes:

29 (a) electrical generation facilities, except wind generation facilities and biomass generation facilities
30 classified under 15-6-157, of a centrally assessed electric power company;

(b) electrical generation facilities, except wind generation facilities and biomass generation facilities classified under 15-6-157, owned or operated by an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to ~~section 32 of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79z-5a~~ 42 U.S.C. 16451;

(c) noncentrally assessed electrical generation facilities, except wind generation facilities and biomass generation facilities classified under 15-6-157, owned or operated by any electrical energy producer; and

(d) allocations of centrally assessed telecommunications services companies.

(2) Class thirteen property does not include:

(a) property owned by cooperative rural electric cooperative associations classified under 15-6-135;

(b) property owned by cooperative rural electric cooperative associations classified under 15-6-137 or 15-6-157;

(c) allocations of electric power company property under 15-6-141;

(d) electrical generation facilities included in another class of property;

(e) property owned by cooperative rural telephone associations and classified under 15-6-135;

(f) property owned by organizations providing telecommunications services and classified under 15-6-135; and

(g) generation facilities that are exempt under 15-6-225.

(3) (a) For the purposes of this section, "electrical generation facilities" means any combination of a physically connected generator or generators, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power. The term includes but is not limited to generating facilities that produce electricity from coal-fired steam turbines, oil or gas turbines, or turbine generators that are driven by falling water.

(b) The term does not include electrical generation facilities used for noncommercial purposes or exclusively for agricultural purposes.

(c) The term also does not include a qualifying small power production facility, as that term is defined in 16 U.S.C. 796(17), that is owned and operated by a person not primarily engaged in the generation or sale of electricity other than electric power from a small power production facility and classified under 15-6-134 and 15-6-138.

(4) Class thirteen property is taxed at 6% of its market value."

1 **Section 4.** Section 15-6-157, MCA, is amended to read:

2 **"15-6-157. Class fourteen property -- description -- taxable percentage.** (1) Class fourteen property
3 includes:

4 (a) wind generation facilities of a centrally assessed electric power company;

5 (b) wind generation facilities owned or operated by an exempt wholesale generator or an entity certified
6 as an exempt wholesale generator pursuant to ~~section 32 of the Public Utility Holding Company Act of 1935, 15~~
7 ~~U.S.C. 79z-5a~~ 42 U.S.C. 16451;

8 (c) noncentrally assessed wind generation facilities owned or operated by any electrical energy producer;

9 (d) wind generation facilities owned or operated by cooperative rural electric associations described
10 under 15-6-137;

11 (e) biomass generation facilities up to 25 megawatts in nameplate capacity of a centrally assessed
12 electric power company;

13 (f) biomass generation facilities up to 25 megawatts in nameplate capacity owned or operated by an
14 exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to 42 U.S.C. 16451;

15 (g) noncentrally assessed biomass generation facilities up to 25 megawatts in nameplate capacity owned
16 or operated by any electrical energy producer;

17 (h) biomass generation facilities up to 25 megawatts in nameplate capacity owned or operated by
18 cooperative rural electric associations described under 15-6-137;

19 ~~(e)~~(i) all property of a biodiesel production facility, as defined in 15-24-3102, that has commenced
20 construction after June 1, 2007;

21 ~~(f)~~(j) all property of a biogas production facility, as defined in 15-24-3102, that has commenced
22 construction after June 1, 2007;

23 ~~(g)~~(k) all property of a biomass gasification facility, as defined in 15-24-3102;

24 ~~(h)~~(l) all property of a coal gasification facility, as defined in 15-24-3102, except for property in subsection
25 ~~(+)(k)~~ (1)(o) of this section, that sequesters carbon dioxide;

26 ~~(i)~~(m) all property of an ethanol production facility, as defined in 15-24-3102, that has commenced
27 construction after June 1, 2007;

28 ~~(j)~~(n) all property of a geothermal facility, as defined in 15-24-3102;

29 ~~(k)~~(o) all property of an integrated gasification combined cycle facility, as defined in 15-24-3102, that
30 sequesters carbon dioxide, as required by 15-24-3111(4)(c);

~~(h)~~(p) all property or a portion of the property of a renewable energy manufacturing facility, as defined in 15-24-3102, that has commenced construction after June 1, 2007;

~~(m)~~(q) all property of a natural gas combined cycle facility;

~~(n)~~(r) equipment that is used to capture and to prepare for transport carbon dioxide that will be sequestered or injected for the purpose of enhancing the recovery of oil and gas, other than that equipment at coal combustion plants of the types that are generally in commercial use as of December 31, 2007, that commence construction after December 31, 2007;

~~(e)~~(s) high-voltage direct-current transmission lines and associated equipment and structures, including converter stations and interconnections, other than property classified under 15-6-159, that:

(i) originate in Montana with a converter station located in Montana east of the continental divide and that are constructed after July 1, 2007;

(ii) are certified under the Montana Major Facility Siting Act; and

(iii) provide access to energy markets for Montana electrical generation facilities listed in this section that commenced construction after June 1, 2007;

~~(p)~~(t) all property of electric transmission lines, including substations, that originate at facilities specified in this subsection (1), with at least 90% of electricity carried by the line originating at facilities specified in this subsection (1) and terminating at an existing transmission line or substation that has commenced construction after June 1, 2007;

~~(q)~~(u) the qualified portion of an alternating current transmission line and its associated equipment and structures, including interconnections, that has commenced construction after June 1, 2007.

(2) (a) The qualified portion of an alternating current transmission line in subsection ~~(1)(q)~~ (1)(u) is that percentage, as determined by the department of environmental quality, of rated transmission capacity of the line contracted for on a firm basis by buyers or sellers of electricity generated by facilities specified in subsection (1) that are located in Montana.

(b) The department of revenue shall classify the total value of an alternating current transmission line in accordance with the determination made by the department of environmental quality pursuant to subsection (2)(a).

(c) The owner of property described under this subsection (2) shall disclose the location of the generation facilities specified in subsection (1) and information sufficient to demonstrate that there is a firm contract for transmission capacity available throughout the year. For purposes of the initial qualification, the owner is not

required to disclose financial terms and conditions of contracts beyond that needed for classification.

(3) Class fourteen property does not include facilities:

(a) at which the standard prevailing rate of wages for heavy construction, as provided in 18-2-401(13)(a), was not paid during the construction phase; or

(b) that are exempt under 15-6-225.

(4) For the purposes of this section, the following definitions apply:

(a) "wind "Wind generation facilities" means any combination of a physically connected wind turbine or turbines, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power from wind.

(b) "Biomass generation facilities" means any combination of boilers, generators, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power from the burning of organic material other than coal, petroleum, natural gas, or any products derived from coal, petroleum, or natural gas, WITH THE USE OF NATURAL GAS OR OTHER FUELS ALLOWED FOR IGNITION AND TO STABILIZE BOILER OPERATIONS.

(5) (a) The department of environmental quality shall determine whether to certify that a transmission line meets the criteria of subsection ~~(1)(s)~~, ~~(1)(t)~~, or ~~(1)(u)~~, as applicable, based on an application provided for in 15-24-3112. The department of environmental quality shall review the certification 10 years after the line is operational, and if the property no longer meets the requirements of subsection ~~(1)(s)~~, ~~(1)(t)~~, or ~~(1)(u)~~, the certification must be revoked.

(b) If the department of revenue finds that a certification previously granted was based on an application that the applicant knew was false or fraudulent, the property must be placed in class nine under 15-6-141. If the application was fraudulent, the applicant may be liable for additional taxes, penalty, and interest from the time that the certification was in effect.

(6) Class fourteen property is taxed at 3% of its market value."

Section 5. Section 75-20-104, MCA, is amended to read:

"75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment that would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted under this chapter.

(3) (a) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, storage ponds, reservoirs, and any other device or equipment associated with the delivery of the energy form or product produced by a facility.

(b) The term does not include a transmission substation, a switchyard, voltage support, or other control equipment or a facility or a natural gas or crude oil gathering line 25 inches or less in inside diameter.

(4) "Board" means the board of environmental review provided for in 2-15-3502.

(5) "Certificate" means the certificate of compliance issued by the department under this chapter that is required for the construction or operation of a facility.

(6) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if the activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by subsection (8)(a) or (8)(b), including upgrading to a design capacity covered by subsection (8)(a), except that the term does not include normal maintenance or repair of an existing facility.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Facility" means:

(a) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term:

(i) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length;

(ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts but less

1 than 230 kilovolts for which the person planning to construct the line has obtained right-of-way agreements or
2 options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property
3 along the centerline;

4 (iii) does not include an electric transmission line that is less than 150 miles in length and extends from
5 an electrical generation facility, as defined in 15-24-3001(4), or a wind generation facility or biomass generation
6 facility, as defined in 15-6-157, to the point at which the transmission line connects to a regional transmission grid
7 at an existing transmission substation or other facility for which the person planning to construct the line has
8 obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively
9 own more than 75% of the property along the centerline;

10 (iv) does not include an upgrade to an existing transmission line to increase that line's capacity within an
11 existing easement or right-of-way; and

12 (v) does not include a transmission substation, a switchyard, voltage support, or other control equipment;

13 (b) (i) each pipeline, whether partially or wholly within the state, greater than 25 inches in inside diameter
14 and 50 miles in length, and associated facilities, except that the term does not include:

15 (A) a pipeline within the boundaries of the state that is used exclusively for the irrigation of agricultural
16 crops or for drinking water; or

17 (B) a pipeline greater than 25 inches in inside diameter and 50 miles in length for which the person
18 planning to construct the pipeline has obtained right-of-way agreements or options for a right-of-way from more
19 than 75% of the owners who collectively own more than 75% of the property along the centerline;

20 (ii) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter
21 and 30 miles in length, and associated facilities used to transport coal suspended in water;

22 (c) any use of geothermal resources, including the use of underground space in existence or to be
23 created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived
24 power equivalent to 25 million Btu's per hour or more or any addition thereto, except pollution control facilities
25 approved by the department and added to an existing plant; or

26 (d) for the purposes of 75-20-204 only, a plant, unit, or other facility capable of generating 50 megawatts
27 of hydroelectric power or more or any addition thereto.

28 (9) "Person" means any individual, group, firm, partnership, corporation, limited liability company,
29 cooperative, association, government subdivision, government agency, local government, or other organization
30 or entity.

(10) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

(11) "Upgrade" means to increase the electrical carrying capacity of a transmission line by actions including but not limited to:

- (a) installing larger conductors;
- (b) replacing insulators;
- (c) replacing pole or tower structures; or
- (d) changing structure spacing, design, or guying.

(12) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

NEW SECTION. Section 6. Applicability. [This act] applies to tax years beginning after December 31, 2009.

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